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EXAMINER
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BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/801,734

Applicant(s)

BOGRETT ET AL.

Examiner

Christopher P. Bruenjes

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 37,46,49,52-57,66,69 and 72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37,46,49,52-57,66,69 and 72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

Art Unit: 1772

## DETAILED ACTION

### WITHDRAWN REJECTIONS

1. All of the objections and rejections of record in the previous Office Action mailed October 18, 2005 have been withdrawn due to Applicant's amendments in the Paper filed March 29, 2006.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1772

3. Claims 37, 46, and 49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8-11 of copending Application No. 10/808,942. Although the conflicting claims are not identical, they are not patentably distinct from each other because application '942 teaches in claims 8-11 a faced fibrous insulation assembly comprising an insulation layer having a length, a width, and a thickness and first and second major surfaces defined by the length and width of the layer. The insulation assembly further contains a facing formed by a Kraft paper sheet material having a central field portion having an outer major and inner major surface. An asphalt coating layer on the inner major surface of the central field portion of the facing bonds the facing to the first major surface of the fibrous insulation layer. The asphalt layer consists essentially of asphalt, a fungi growth inhibiting agent and odor-reducing additive in an amount approximating 1 part by weight to 10,000 parts asphalt to substantially eliminate odor that would otherwise be emitted by the asphalt layer. The second surface of the Kraft paper sheet is essentially free of the asphaltic material since the asphalt layer is applied to only the first surface. The fungi growth inhibiting agent

Art Unit: 1772

claimed is defined in the specification as TBZ added to the asphalt layer so that the Kraft paper sheet material contains between 200 and 2000ppm TBZ (see paragraphs 21 and 23 of the specification).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103.***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 1772

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 37, 49, 53, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voigt et al (USPN 2,280,460) in view of Szwarc (USPN 2,496,566) and Gembala (US 2004/0166087). Note the parent applications to 10/801,734 do not provide written description support for all of the limitations in the two independent claims 37 and 57 and therefore, the effective filing date of all of the pending claims is the filing date of 10/801,734, which is March 15, 2004.

Regarding claim 37, Voigt et al teach a faced insulation assembly comprising an insulation layer (reference number 14, Figure 1). The insulation layer inherently has a length, a width, and a thickness and has first and second major surfaces defined by the length and width of the layer, since the insulation material fills the gap between studs in a building (See Figure 1). The insulation assembly further contains a facing or backing sheet (reference number 16, Figure 1) comprising Kraft paper (p.1, col.2, 1.24-31). The Kraft paper has a central filed portion that overlays the first major surface of the insulation layer (See Figure 1). The Kraft paper further has first inner major surface and second outer major

Art Unit: 1772

surface (See Figure 1). An asphalt layer is placed on the first inner major surface of the Kraft paper and bonds the central field portion of the Kraft paper sheet to the first major surface of the insulation layer (p.1, col.2, l.23-28). The asphalt partially absorbs into the Kraft paper (p.1, col.2, l.28-31). The second major surface of the Kraft paper sheet is essentially free of the asphalt since the asphalt is applied to the first major surface only.

Voigt et al fail to teach the specific composition of the asphalt layer, however, Szwarc teaches a specific asphalt composition to be used in the formation of water-vapor resistant coated paper such as the paper used in Voigt et al.

Specifically, Szwarc teaches Kraft paper coated and partially absorbed with an asphalt composition that provides the Kraft paper with a continuous, flexible, water resistant film which withstands creasing and folding without rupture or cracking (col.1, l.1-13). Swarc also teaches that the asphalt composition lends itself to the incorporation therein of suitable fungicides (col.1, l.18-20). One of ordinary skill in the art would have recognized that an asphalt composition that provides Kraft paper with a continuous, flexible, water resistant film which withstands creasing and folding without rupture or cracking would be a desirably used composition for

Art Unit: 1772

the formation of water vapor proof materials and that fungicides are added to water vapor proof materials to inhibit fungi growth.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the vapor proof material facing or backing sheet of Voigt et al, with the asphalt composition of Szwarc since Voigt et al teach the general structure of an asphalted Kraft paper sheet and Szwarc teaches that asphalted Kraft paper is formed with the specific asphalt composition containing a fungicide of Szwarc in order to provide the Kraft paper with a continuous, flexible, water resistant film which withstands creasing and folding without rupture or cracking (col.1, 1.10-13 of Szwarc), and because it would have been obvious to one having ordinary skill in the art that fungicides taught in Szwarc for use in asphalted Kraft paper would be added to water vapor proof materials in order to inhibit fungi growth.

Voigt et al and Szwarc taken as a whole fail to teach that the fungi resistant asphalt also consists of an essential oil odor-reducing additive. However, Gembala teaches that the need for odor reduction and masking in the asphalt compositions is well known in the construction industry (p.1, paragraph 4). Gembala further teaches that essential plant oil odor-reducing



Art Unit: 1772

additives are added to asphalt in order to reduce and mask the odor of the asphalt composition (p.1, paragraph 7). Gembala also teaches that the fragrance is added in moderate amounts so as to not interfere with the performance or workability of the asphalt (p.1, Paragraph 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add an essential plant oil odor-reducing additive to a asphalt used in the art of roofing materials in order to reduce and mask the odor of the asphalt composition, as taught by Gembala, and that the amount of the additive would be optimized based on the amount needed to reduce and mask the odor without interfering with the performance of the asphalt, as taught by Gembala.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add an essential plant oil odor-reducing additive in the amount claimed to the asphalt containing sheet material of Voigt et al and Szwarc in order to reduce and mask the odor of the asphalt composition as desired in the construction industry, as taught by Gembala. Furthermore, the amount of the additive would be selected by one having ordinary skill in the art after routine experimentation to determine the optimal amount desired to mask

Art Unit: 1772

the odor without interfering with the performance or workability of the asphalt, as taught by Gembala.

Regarding claim 49, Voigt et al teach that the central field portion of the Kraft paper sheet material consists essentially of the Kraft paper sheet and the asphalt layer, which is substantially coextensive with the surface of the central field portion of the Kraft paper sheet material (Figure 1 and p.1, col.1, 1.23-34).

Regarding claim 53, Voigt et al teach that the central field portion of the facing is substantially coextensive with the first major surface of the insulation layer (see Figure 1). Voigt et al does teach that the facing preferably contain lateral tabs in order to enable the facing to be nailed or adhered to the studs of the building, but one of ordinary skill in the art would have recognized that the insulation assembly could be attached to the studs without lateral tabs and therefore the lateral tabs although preferred are not required.

Regarding claim 55, Voigt et al teach that the facing has first and second lateral tabs extending for the length of the sheet material that are separated from each other by the central field portion of the sheet material (Figure 1 and p.1, col.2, 1.31-34).

Art Unit: 1772

7. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voigt et al, Szwarc, and Gembala as applied to claim 37 above, and further in view of Inoue (USPN 4,629,645).

Voigt et al, Szwarc, and Gembala taken as a whole teach all that is claimed in claim 37 as presented above, but fail to teach 2-(4-Thiazolyl) Benzimidazole as the fungi growth inhibiting agent. However, Inoue teaches that mold inhibitive materials including tough and flexible paper such as Kraft paper used in applying to walls of buildings include mold or fungus inhibitive agents such as 2-(4-Thiazolyl) Benzimidazole (col.5, 1.21-25) added in the range of 0.05% to 10% (col.5, 1.55-57). 0.05% is within the claimed range. Inoue teaches that this agent is used in treating paper sheet material for applying to walls of buildings because of its safety durability, heat resistance, and being efficacious against mold (col.5, 1.27-30). It would have been obvious to one having ordinary skill in the art to select 2-(4-Thiazolyl) Benzimidazole as the fungi growth inhibiting agent in a facing paper used in applying to walls of buildings, because of its superior safety, durability, and heat resistance over other known fungi growth-inhibiting agents, as taught by Inoue.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was

Art Unit: 1772

made to use 2-(4-Thiazolyl) Benzimidazole in a concentration of 0.05% of the sheet material as the fungi growth-inhibiting agent in Voigt et al and Szwarc because it is a well known agent for that purpose and it has superior safety durability and heat resistance over other known fungi growth-inhibiting agents, and these properties are necessary considerations when choosing the agent when employing them as building materials, as taught by Inoue.

8. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voigt et al, Szwarc, and Gembala as applied to claim 37 above, and further in view of Inoue (USPN 4,629,645) and Beilfuss et al (US 2001/0021711 A1).

Voigt et al, Szwarc, and Gembala taken as a whole teach all that is claimed in claim 37 as presented above, but fail to teach 2-(4-Thiazolyl) Benzimidazole and zinc pyrithione as the fungi growth inhibiting agent. However, Inoue teaches that mold inhibitive materials including tough and flexible paper such as Kraft paper used in applying to walls of buildings include mold or fungus inhibitive agents such as 2-(4-Thiazolyl) Benzimidazole (col.5, 1.21-25) added in the range of 0.05% to 10% (col.5, 1.55-57). 0.05% is within the claimed range. Inoue teaches that this agent is used in treating paper sheet material

Art Unit: 1772

for applying to walls of buildings because of its safety durability, heat resistance, and being efficacious against mold (col.5, 1.27-30). It would have been obvious to one having ordinary skill in the art to select 2-(4-Thiazolyl) Benzimidazole as the fungi growth inhibiting agent in a facing paper used in applying to walls of buildings, because of its superior safety, durability, and heat resistance over other known fungi growth-inhibiting agents, as taught by Inoue.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use 2-(4-Thiazolyl) Benzimidazole in a concentration of 0.05% of the sheet material as the fungi growth-inhibiting agent in Voigt et al and Szwarc because it is a well known agent for that purpose and it has superior safety durability and heat resistance over other known fungi growth-inhibiting agents, and these properties are necessary considerations when choosing the agent when employing them as building materials, as taught by Inoue.

Voigt et al, Szwarc, and Inoue fail to teach adding zinc pyrithione to the asphalt composition coated on the Kraft paper facing. However, Beilfuss et al teach that when forming a microbiocidal composition, using one or more fungicides, zinc pyrithione is added to the composition in order to stabilize the

Art Unit: 1772

composition (p.2, paragraph 22). One of ordinary skill in the art would have recognized that zinc pyrithione is added to fungicide containing compositions in order to stabilize the composition, as taught by Beilfuss et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add zinc pyrithione to the asphalt composition coated on the Kraft paper facing of Voigt et al, Szwarc, and Inoue in order to stabilize the fungicide composition, as taught by Beilfuss et al.

9. Claims 54 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voigt et al, Szwarc, and Gembala as applied to claims 53 and 55 above, and further in view of Weinstein et al (US 2001/0030018 A1).

Voigt et al, Szwarc, and Gembala taken as a whole teach all that is claimed in claims 53 and 55 as presented above. Voigt et al, Szwarc, and Gembala taken as a whole fail to explicitly teach forming the facing sheet having perforation lines so that sections of the insulation assembly are separable by hand. However, Weinstein et al teach that is well-known in the art that facing sheets formed of asphalted Kraft paper covering glass fiber insulation blankets have one or more perforated

Art Unit: 1772

lines or overlapping tabs for permitting the facing to be separated at each cut in a pre-cut fibrous insulation blanket to facilitate separating or tearing apart a faced insulation blanket by hand (p.2, paragraph 11). Another embodiment of Weinstein et al includes the insulation layer as laterally compressible because it is a fibrous material. The central field portion of the facing is not bonded to the first major surface of the insulation layer adjacent lateral edge portions of the first major surface of the insulation layer at reference number 37, Figure 12. The limitation "so that lateral compression of the insulation layer causes lateral edge portions of the central field portion of the facing to extend laterally beyond the insulation layer" is a functional limitation in an article claim. Functional language is given little patentable weight as long as the article meets all of the structural limitations. See MPEP 2114. In this case, the assembly of Weinstein et al meets the structural limitations and has the ability to perform the functions claimed. One of ordinary skill in the art would have recognized that Kraft paper sheets having asphalt layers are formed with perforation lines or overlapping tabs to permit the facing to be separated at pre-cut cuts in the insulation blanket or other configurations taught by Weinstein et al, as taught by Weinstein et al.

Art Unit: 1772

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to form the facing with perforation lines or overlapping tabs to permit the facing to be separated at pre-cut cuts in the insulation blanket, as taught by Weinstein et al.

10. Claims 57 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voigt et al (USPN 2,280,460) in view of Fasold et al (USPN 2,568,850), Szwarc (USPN 2,496,566), and Gembala (US 2004/0166087 A1).

Regarding claim 57, Voigt et al teach a faced insulation assembly comprising an insulation layer (reference number 14, Figure 1). The insulation layer inherently has a length, a width, and a thickness and has first and second major surfaces defined by the length and width of the layer, since the insulation material fills the gap between studs in a building (See Figure 1). The insulation assembly further contains a facing or backing sheet (reference number 16, Figure 1) comprising Kraft paper (p.1, col.2, l.24-31). The Kraft paper has a central filed portion that overlays the first major surface of the insulation layer (See Figure 1). The Kraft paper further has first inner major surface and second outer major surface (See Figure 1). An asphalt layer is placed on the first



Art Unit: 1772

inner major surface of the Kraft paper and bonds the central field portion of the Kraft paper sheet to the first major surface of the insulation layer (p.1, col.2, 1.23-28). The asphalt partially absorbs into the Kraft paper (p.1, col.2, 1.28-31). The second major surface of the Kraft paper sheet is essentially free of the asphalt since the asphalt is applied to the first major surface only.

Voigt et al fail to teach that the facing or backing sheet is a covering that overlies the series of cavities rather than individually cut and bonded to each insulation batt. However, Fasold et al teach that that the vapor barrier paper or facing of the insulation material may be formed either as an integral part of the insulation material, where the paper is generally made to extend somewhat beyond opposite sides of the insulation material for ready securement to studding or joists, such as the facing of Voigt et al, or the paper may be supplied separately in the form of rolls for application as by nailing it to the interior of the studding of exterior walls (col.2, 1.9-20). Therefore, it would have been obvious to one having ordinary skill in the art that vapor proof material made from asphalted Kraft paper is used to cover insulation material in the form of a separately applied roll or integral sheets adhered to the

Art Unit: 1772

insulation material depending on end use, as taught by Fasold et al.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the vapor-proof material of Voigt et al as a separately applied roll covering to the insulation batts rather than the integral facings adhered to individual insulation batts, depending on the intended end result of the assembly since both forms of vapor proof coverings for insulation batts in building walls are interchangeable, as taught by Fasold et al.

Furthermore, it would have been obvious to one having ordinary skill in the art to form the vapor proof paper covering to have a thickness between 2 and 6 mils, through routine experimentation since the thickness would be optimized based on the need to have enough thickness to prevent vapor transmission while limiting the amount of vapor proof paper used, absent the showing of unexpected result.

Voigt et al and Fasold et al taken as a whole fail to teach the specific composition of the asphalt layer, however, Szwarc teaches a specific asphalt composition to be used in the formation of water-vapor resistant coated paper such as the paper used in Voigt et al. Specifically, Szwarc teaches Kraft paper coated and partially absorbed with an asphalt composition

Art Unit: 1772

that provides the Kraft paper with a continuous, flexible, water resistant film which withstands creasing and folding without rupture or cracking (col.1, 1.1-13). Szwarc also teaches that the asphalt composition lends itself to the incorporation therein of suitable fungicides (col.1, 1.18-20). One of ordinary skill in the art would have recognized that an asphalt composition that provides Kraft paper with a continuous, flexible, water resistant film which withstands creasing and folding without rupture or cracking would be a desirably used composition for the formation of water vapor proof materials and that fungicides are added to water vapor proof materials to inhibit fungi growth.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to form the vapor proof material of Voigt et al and Fasold et al, with the asphalt composition of Szwarc since Voigt et al and Fasold et al teach the general structure of an asphalted Kraft paper sheet and Szwarc teaches that asphalted Kraft paper is formed with the specific asphalt composition containing a fungicide of Szwarc in order to provide the Kraft paper with a continuous, flexible, water resistant film which withstands creasing and folding without rupture or cracking (col.1, 1.10-13 of Szwarc), and because it would have been obvious to one having

Art Unit: 1772

ordinary skill in the art that fungicides taught in Szwarc for use in asphalted Kraft paper would be added to water vapor proof materials in order to inhibit fungi growth.

Voigt et al, Fasold et al, and Szwarc fail to teach that the fungi resistant asphalt also consists of an essential oil odor-reducing additive. However, Gembala teaches that the need for odor reduction and masking in the asphalt compositions is well known in the construction industry (p.1, paragraph 4). Gembala further teaches that essential plant oil odor-reducing additives are added to asphalt in order to reduce and mask the odor of the asphalt composition (p.1, paragraph 7). Gembala also teaches that the fragrance is added in moderate amounts so as to not interfere with the performance or workability of the asphalt (p.1, Paragraph 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add an essential plant oil odor-reducing additive to a asphalt used in the art of roofing materials in order to reduce and mask the odor of the asphalt composition, as taught by Gembala, and that the amount of the additive would be optimized based on the amount needed to reduce and mask the odor without interfering with the performance of the asphalt, as taught by Gembala.

Art Unit: 1772

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to add an essential plant oil odor-reducing additive in the amount claimed to the asphalt containing sheet material of Voigt et al, Fasold et al, and Szwarc in order to reduce and mask the odor of the asphalt composition as desired in the construction industry, as taught by Gembala. Furthermore, the amount of the additive would be selected by one having ordinary skill in the art after routine experimentation to determine the optimal amount desired to mask the odor without interfering with the performance or workability of the asphalt, as taught by Gembala.

Regarding claim 69, Fasold et al teach that the Kraft paper sheet material consists essentially of the Kraft paper sheet and the asphalt layer, which is substantially coextensive with the first major surface of the Kraft paper sheet material (col.2, 1.28-34).

11. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voigt et al, Fasold et al, Szwarc, and Gembala as applied to claim 57 above, and further in view of Inoue (USPN 4,629,645).

Voigt et al, Fasold et al, Szwarc, and Gembala taken as a whole teach all that is claimed in claim 57 as presented above,

Art Unit: 1772

but fail to teach 2-(4-Thiazolyl) Benzimidazole as the fungi growth inhibiting agent. However, Inoue teaches that mold inhibitive materials including tough and flexible paper such as Kraft paper used in applying to walls of buildings include mold or fungus inhibitive agents such as 2-(4-Thiazolyl) Benzimidazole (col.5, 1.21-25) added in the range of 0.05% to 10% (col.5, 1.55-57). 0.05% is within the claimed range. Inoue teaches that this agent is used in treating paper sheet material for applying to walls of buildings because of its safety durability, heat resistance, and being efficacious against mold (col.5, 1.27-30). It would have been obvious to one having ordinary skill in the art to select 2-(4-Thiazolyl) Benzimidazole as the fungi growth inhibiting agent in a facing paper used in applying to walls of buildings, because of its superior safety, durability, and heat resistance over other known fungi growth-inhibiting agents, as taught by Inoue.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use 2-(4-Thiazolyl) Benzimidazole in a concentration of 0.05% of the sheet material as the fungi growth-inhibiting agent in Voigt et al and Szwarc because it is a well known agent for that purpose and it has superior safety durability and heat resistance over other known fungi growth-inhibiting agents, and

Art Unit: 1772

these properties are necessary considerations when choosing the agent when employing them as building materials, as taught by Inoue.

12. Claim 72 is rejected under 35 U.S.C. 103(a) as being unpatentable over Voigt et al, Fasold et al, Szwarc, and Gembala as applied to claim 57 above, and further in view of Inoue (USPN 4,629,645) and Beilfuss et al (US 2001/0021711 A1).

Voigt et al, Fasold et al, Szwarc, and Gembala taken as a whole teach all that is claimed in claim 57 as presented above, but fail to teach 2-(4-Thiazolyl) Benzimidazole and zinc pyrithione as the fungi growth inhibiting agent. However, Inoue teaches that mold inhibitive materials including tough and flexible paper such as Kraft paper used in applying to walls of buildings include mold or fungus inhibitive agents such as 2-(4-Thiazolyl) Benzimidazole (col.5, 1.21-25) added in the range of 0.05% to 10% (col.5, 1.55-57). 0.05% is within the claimed range. Inoue teaches that this agent is used in treating paper sheet material for applying to walls of buildings because of its safety durability, heat resistance, and being efficacious against mold (col.5, 1.27-30). It would have been obvious to one having ordinary skill in the art to select 2-(4-Thiazolyl) Benzimidazole as the fungi growth inhibiting agent in a facing

Art Unit: 1772

paper used in applying to walls of buildings, because of its superior safety, durability, and heat resistance over other known fungi growth-inhibiting agents, as taught by Inoue.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use 2-(4-Thiazolyl) Benzimidazole in a concentration of 0.05% of the sheet material as the fungi growth-inhibiting agent in Voigt et al and Szwarc because it is a well known agent for that purpose and it has superior safety durability and heat resistance over other known fungi growth-inhibiting agents, and these properties are necessary considerations when choosing the agent when employing them as building materials, as taught by Inoue.

Voigt et al, Fasold et al, Szwarc, Gembala, and Inoue fail to teach adding zinc pyrithione to the asphalt composition coated on the Kraft paper facing. However, Beilfuss et al teach that when forming a microbiocidal composition, using one or more fungicides, zinc pyrithione is added to the composition in order to stabilize the composition (p.2, paragraph 22). One of ordinary skill in the art would have recognized that zinc pyrithione is added to fungicide containing compositions in order to stabilize the composition, as taught by Beilfuss et al.



Art Unit: 1772

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add zinc pyrithione to the asphalt composition coated on the Kraft paper facing of Voigt et al, Fasold et al, Gembala, Szwarc, and Inoue in order to stabilize the fungicide composition, as taught by Beilfuss et al.

### ***Response to Arguments***

13. Applicant's arguments with respect to claims 37, 46, 49, 52-57, 66, 69, and 72 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thompson et al (US 2005/0223668 A1) is the publication of application number 10/808,942; English (USPN 5,554,238); Gaston et al (USPN 3,222,243); Toas et al (US 2005/0170721 A1).

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1772

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB *CPB*  
May 8, 2006

*[Signature]*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

*5/9/06*